

191—15.71(507B) Duties of insurers and of insurance producers.

15.71(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

15.71(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

- a. The consumer's financial status;
- b. The consumer's tax status;
- c. The consumer's investment objectives; and
- d. Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

15.71(3) An insurer or insurance producer's recommendation shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation. However, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subrule 15.71(1) related to any recommendation if a consumer:

- a. Refuses to provide relevant information requested by the insurer or insurance producer;
- b. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
- c. Fails to provide complete or accurate information.

15.71(4) Establishment and maintenance of a system of supervision.

a. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with 15.71(4) "c" to "e" or shall establish and maintain such a system including, but not limited to:

- (1) Maintaining written procedures; and
- (2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this rule.

b. A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this rule, or shall establish and maintain such a system including, but not limited to:

- (1) Maintaining written procedures; and
- (2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule.

c. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by 15.71(4) "a" with respect to insurance producers under contract with or employed by the third party.

d. An insurer shall make reasonable inquiry to assure that the third party contracting under 15.71(4) "c" is performing the functions required under 15.71(4) "a" and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(1) Annually obtain a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(2) Based on reasonable selection criteria, periodically select third parties contracting under 15.71(4) "c" for a review to determine whether the third parties are performing the required functions. In conducting the review, the insurer shall perform those procedures that are reasonable under the circumstances.

e. An insurer that contracts with a third party pursuant to 15.71(4) "c" and that complies with the requirements to supervise in 15.71(4) "d" shall have fulfilled its responsibilities under 15.71(4) "a."

f. An insurer, general agent or independent agency is not required by 15.71(4) “*a*” or “*b*” to:

- (1) Review, or provide for review of, all insurance producer solicited transactions; or
- (2) Include in its system of supervision an insurance producer’s recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

g. A general agent or independent agency contracting with an insurer pursuant to 15.71(4) “*c*” shall promptly, when requested by the insurer pursuant to 15.71(4) “*d*,” give a certification as described in 15.71(4) “*d*” or give a clear statement that the general agent or independent agency is unable to meet the certification criteria.

h. No person may provide a certification under 15.71(4) “*d*”(1) unless:

- (1) The person is a senior manager with responsibility for the delegated functions; and
- (2) The person has a reasonable basis for making the certification.

15.71(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this rule for the recommendation of variable annuities. However, nothing in this subrule shall limit the insurance commissioner’s ability to enforce the provisions of this rule.